

Appl. No. : 10/090,406  
Filed : March 4, 2002

### REMARKS

With this amendment, Claims 9-20, 22-25, and 28-38 are pending in the present application. Claims 9, 10, 12-20, 22-25, and 28-32 have been amended; Claims 1-8 have been cancelled; and Claims 33-38 have been added. In view of the foregoing amendment and the following remarks, Applicant respectfully requests reconsideration and allowance of this application.

#### Priority

In the Office Action, the Examiner acknowledged receipt of papers submitted under 35 U.S.C. §119(a)-(d), which papers have been placed of record in the file.

#### Terminal Disclaimer

The Examiner also indicated in the Office Action that the terminal disclaimer filed on August 29, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of a patent grant from application 10/090,375 have been reviewed and granted and that the terminal disclaimer has been recorded.

#### Claim Objections

Claim 1 is objected to because of certain informalities. Applicant respectfully submits that this objection is moot in view of the cancellation of Claim 1.

#### Claim Rejections

The Examiner rejected Claims 1-8, 12-20, 23-27, and 29-32 under 35 U.S.C. §103(a) as obvious over U.S. 4,818,595 to Ellis in view of U.S. 4,981,740 to Larsen. However, the Examiner indicated that Claims 9-11, 22 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Examiner also indicated that while the prior art suggests a fire barrier laminate comprising a substrate with a coating comprising calcium aluminate cement (hydraulic binder) and fly ash (Ellis in view of Larsen), the prior art taken as a whole, fails to teach or suggest a reinforcing layer of fiber reinforced cement on the functional layer. Further, the Examiner indicated that the prior art fails to teach or suggest the claimed breakdown of particle size of the fly ash component recited in Claims 22 and 28. In accordance with the Examiner's views, Applicant has amended the objected claims so that they are rewritten in independent form and include all of the limitations of the base claim and any

Appl. No. : 10/090,406  
Filed : March 4, 2002

intervening claims. Moreover, Applicant has added additional claims that depend from the allowable base claims. Applicant further notes that the examiner in one of Applicant's co-pending application (U.S. Application No. 10/090,560), which contains claim scope that are similar to that of the pending claims, had rejected the claims in view of Ellis and Larsen because the examiner in that case believes that absent a showing of the criticality of using about 5-30 wt% of a fly ash component having a maximum particle size of around 10 microns, it would have been within the ordinary skill of one in the art to determine the most advantageous particle size. However, Applicant agrees with the present Examiner's view with regards to Larsen and Ellis in view of the claim scope.


### CONCLUSION

In view of the foregoing, Applicant respectfully submits that all pending claims, including the newly added Claims 33-38, of the present application are in condition for allowance, and such action is earnestly solicited. Should there be any impediment to the prompt allowance of this application that could be resolved through a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3/26/2004

By:   
Linda H. Liu  
Registration No. 51,240  
Attorney of Record  
Customer No. 20,995  
(909) 781-9231